



ANTHONY A. WILLIAMS
MAYOR

February 8, 2006

Honorable Linda W. Cropp
Chairman
Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, NW, Suite 504
Washington, DC 20004

Dear Chairman Cropp:

Enclosed for the Council's consideration and approval is the National Capital Medical Center Grant Agreement.

This new hospital is essential to creating a comprehensive, high-quality healthcare delivery system in the District of Columbia. It will improve the distribution of medical services across the city. In particular, it will expand access to emergency, trauma, inpatient, specialty, and diagnostic care for our poorest and sickest residents on the Eastern side of the District, who are currently medically underserved. Additionally, new NCMC emergency room capacity will take pressure off hospital ERs around the city, improving the District's emergency response capability. The NCMC will also ensure that the District's level one trauma facilities are not clustered in the same part of the city, which could be problematic in the event of a major disaster.

The Council initially directed me to pursue a new hospital with Howard University through emergency legislation in November 2003. Subsequently in May of 2004, the Council unanimously approved a Memorandum of Understanding between the District and Howard. In January 2006, President Patrick Swygert and I signed the Exclusive Rights Agreement (ERA) for the construction of the NCMC.

The NCMC Grant Agreement authorizes the District to provide Howard University with a grant of not more than \$212,168,000 for construction of the NCMC. It describes the mechanics of how the District's and Howard's contributions to the project will be transferred and expended from the NCMC escrow account. The Grant Agreement ensures that the District will provide no more than 50% of actual NCMC project costs

and that the District's contribution will not exceed \$212,168,000, even if the total cost of the project were to increase above the current estimate.

In addition to the Grant Agreement, I have introduced five other related pieces of legislation that will allow the District to complete the NCMC project with Howard: an exclusive rights agreement, a lease agreement, a Certificate of Need exemption, an amendment to the Tobacco Settlement Trust Fund Establishment Act, and a resolution to authorize the issuance of new Tobacco Settlement Trust Fund bonds. The last two bills will authorize the Office of the Chief Financial Officer to issue additional Tobacco Settlement Trust Fund bonds. The proceeds of this bond transaction are projected to total \$200 million to \$230 million, of which \$212,168,000 is intended to fund the NCMC.

The six related pieces of legislation should be viewed by the Council as a package. They must all be approved in order to move forward with the National Capital Medical Center Project. I hope the Council will work with me to advance this hospital project, which is so important to the health and welfare of District residents. I look forward to Council action on this Grant Agreement and the other related pieces of legislation this spring.

Sincerely,

A handwritten signature in black ink, reading "Anthony A. Williams". The signature is written in a cursive, flowing style.

Anthony A. Williams

Enclosures
AAW/gm

GRANT AGREEMENT

THIS GRANT AGREEMENT, dated as of _____, 2006 (this "Agreement"), between the DISTRICT OF COLUMBIA, a municipal corporation, with offices at 1350 Pennsylvania Ave., N.W., The John A. Wilson Building, Washington, D.C. 20004 (the "District") and HOWARD UNIVERSITY, a non-profit corporation, with offices at 2400 6th Street, N.W., Washington, D.C. 20059 ("Howard").

RECITALS

1. The District and Howard have entered into that certain Exclusive Rights Agreement dated as of January 3, 2006 (the "ERA") pursuant to the terms of which the parties undertake to develop a hospital and related facilities to be known as the National Capital Medical Center (the "Project") on Reservation 13 in the District of Columbia.

2. The ERA requires, among other things, that the District and Howard share the cost of development and construction of the NCMC Hospital in accordance with specific terms and conditions set forth in a grant agreement to be entered into by them, and approved by the Council of the District of Columbia (the "Council").

3. The parties wish to enter into this Agreement to implement the foregoing requirement of the ERA.

NOW, THEREFORE, in consideration of the mutual undertakings herein set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE I

DEFINITIONS

1.1 Capitalized terms that are not defined in this Agreement but are defined in the ERA shall have the same meaning in this Agreement as in the ERA.

"Commencement Date" means the last date as of which the District has approved this Agreement and the Council has enacted legislation approving the Project, the Ground Lease, Grant Agreement and the exemption from the Certificate of Need process.

"Construction Funding Amount" means each Party's fifty percent (50%) share of the Project Costs incurred during the Construction Phase of the Project, as described in Article IV of the ERA and Section 2.1.2 of this Agreement.

"Construction Phase Commencement Date" means the date on which the Lender funds the tax-exempt financing proceeds or other source of financing proceeds.

“Contingency Fund Amount” means each Party’s obligation to fund up to \$21,200,000 of Project Costs in the event that the total Project Costs exceed the estimated Project Costs of \$381,936,000.

“Development Agreement” means the agreement to be negotiated in good faith between the District and NCMC governing the design, development, funding and construction of the NCMC Hospital and the MOB.

“ERA” means the agreement defined in the first recital.

“Escrow Account” means the account which is the subject of the Escrow Agreement and which is referred to in Article II of this Agreement.

“Escrow Agent” means during the Initial Funding Period a bank having trust powers, doing business in the District of Columbia and selected by the mutual agreement of the District and Howard and any successor thereto and any substitute Escrow Agent agreed to by the District and Howard, and after the closing on the Financing Commitment, the Trustee as defined in that certain indenture of trust delivered in connection with the Financing Commitment.

“Escrow Agreement” means the agreement substantially in the form of Exhibit A entered into among the District, Howard and Escrow Agent, as that agreement may be amended from time to time with the consent of the District and Howard.

“Financing Commitment” means the written commitment from the Secretary of Housing and Urban Development acting by and through the Federal Housing Administration (“FHA”) to provide FHA mortgage insurance or other credit enhancement of the NCMC tax-exempt financing or other form of financing from another source approved by Howard to fund its share of the Project Costs described in Section 4.5.3 of the ERA.

“Guaranteed Maximum Price” means the firm estimate of the Project Costs of the Construction Phase of the Project prepared by a third party construction firm for submission to the FHA or other financing sources in order to secure the Financing Commitment.

“Grant” means the funds to be deposited by the District in the Escrow Account or credited to the District’s share of the Project Costs, as set forth in Article II of this Agreement. The Grant is capped at a Total Contribution Obligation of \$212,168,000.

“Ground Lease” means the 99-year lease to be negotiated in good faith between the District and NCMC for the Project Area.

“Howard Contribution” means the funds to be deposited into the Escrow Account by Howard, or on account of Howard by the Lender or Mortgagor, pursuant to the Financing Commitment or credited to Howard’s share of the Project Costs, as set forth in Article II of this Agreement. The Howard Contribution is capped at a Total Contribution Obligation of \$212,168,000. The Howard Contribution is exclusive of any obligation of Howard to fund working capital deficits, if any, of NCMC during its initial three (3) years of operation.

“Howard University Hospital” or “HUH” means the division of Howard University responsible for the operation of the licensed acute care hospital located at 2041 Georgia Avenue, Washington, D.C. 20060. HUH does not include the Howard University College of Medicine, its faculty, scientists, clinical departments, institutes, centers and support services.

“HUH Assets” means the improvements, fixtures, equipment and inventory located at HUH and related to the operation of the hospital, including tangible and intangible property. The term “HUH Assets” does not include the real estate underlying HUH nor any tangible or intangible property of the Howard University College of Medicine.

“Infrastructure Costs” means the cost and expense related to the Infrastructure preparation of the Project Area by the District, as described in Section 4.5.1 of the ERA, including the demolition of existing improvements on the Project Area, clearing, construction and installation of public roads and utilities and remediating or removing, transporting and disposing of soils and other materials from the Project Area containing hazardous substances.

“Initial Contribution Amount” means each Party’s fifty percent (50%) share of the Project Costs related to the completion of the Planning and Preconstruction and Financing Phases of the Project, as described in Article IV of the ERA.

“Lender” means the entity providing financing proceeds pursuant to a Financing Commitment.

“Mayor” means the Mayor of the District of Columbia.

“MOB” means the medical office building to be constructed on a portion of the Project in accordance with the Development Agreement.

“NCMC” means the nonprofit corporation to be formed by Howard to undertake the development and construction of the Project described in the first recital and which as of the date hereof is expected to be the Mortgagor of the Project Area.

“NCMC Hospital” means an approximate 250 bed hospital with ancillary facilities and amenities, including a parking garage, to be constructed on a portion of the Project Area, in accordance with the Development Agreement.

“Project” means the development of a state-of-the-art teaching hospital and related facilities on the Project Area.

“Project Area” means Sites B and C, consisting of approximately nine (9) acres, of United States Reservation 13 (“Reservation 13”) in the District of Columbia which is held by the District pursuant to a Letter Transfer of Jurisdiction from the United States of America, acting through the General Services Administration, said Letter Transfer bearing date October 25, 2002, and filed of record in the Office of the Recorder of Deeds of the District of Columbia on October 30, 2002 as Instrument Number 2002125610.

“Project Costs” shall mean the reasonable and necessary hard costs, fees and soft costs required to design, develop, finance, construct, and equip the NCMC Hospital, including all architectural, engineering, planning, permitting and construction work in connection with the NCMC Hospital, parking as required by any governmental authority related thereto, and all reasonable and necessary medical equipment related to the NCMC Hospital (but excluding any additional parking structures beyond the hospital parking or any other improvements that may be constructed on the Project Area), including, without limitation, all drawings, plans, specifications, permits or other approvals relating thereto, all insurance and bonds, all costs of construction, including supervision thereof, telecommunications cabling, and any changes, together with all related fees and expenses, general conditions and contingences, professionals and consultants, equipment and financing costs incurred before or after the execution of this Agreement. Specifically, Project Costs shall include the following: the hospital facility; hospital parking garage; hospital medical equipment; architectural and engineering fees for the hospital and parking garage; furniture, fixtures and equipment for the hospital and parking garage; capital costs relating to the relocation of certain services from HUH to NCMC Hospital or the placement of certain public health services of NCMC at HUH, and administration for the hospital and parking garage.

It is specifically understood and agreed by the District and Howard that Project Costs shall not include any cost for the MOB or Research Center, including all soft costs such as architectural and engineering fees, medical equipment, furniture, fixtures and equipment, and owner administration. Any cost associated with the development and construction of the MOB or Research Center shall be the sole responsibility of Howard. Any cost associated with the District’s funding of the Infrastructure Costs and undertaking to perform the Infrastructure development are not included in the Project Costs.

“Project Documents” means this Agreement, the ERA, the Ground Lease, the Development Agreement, and the Financing Commitment.

“Research Center” means the first research building that is anticipated to be constructed on a portion of the Project Area.

“Total Contribution Obligation” means the total amount that each party shall be obligated to deposit in the Escrow Account under this Agreement as described in Section 2.1. The Total Contribution Obligation is exclusive of any obligation of Howard to fund working capital deficits, if any, of NCMC during its initial three (3) years of operation and any obligation of the District to fund the Infrastructure Costs.

ARTICLE II

THE GRANT AND THE HOWARD CONTRIBUTION

2.1 Determination of Amount and Timing of Payments into Escrow Account.

The District and Howard shall each be responsible for funding the payment of 50% of the Project Costs. Unless otherwise agreed by the parties in a written agreement, each of the District's Grant and Howard's Contribution shall not exceed a total of the Total Contribution Obligation. The parties acknowledge that the Project Costs will be incurred over a period of several years pursuant to a pre-construction, financing and construction schedule to be determined by the District and Howard in the Project Documents, including the ERA, this Agreement and the Financing Commitment. The District and Howard intend to pay Project Costs as they are incurred and to that end agree in this Agreement to fund an Escrow Account in stages or otherwise as appropriate in connection with the requirements of the Financing Commitment so that incurred Project Costs may be paid when payment is required even though the Total Contribution Obligation of either party has not been funded or deposited into the Escrow Account. The District and Howard agree that each shall make payments of portions of the Grant or the Howard Contribution, respectively, substantially in accordance with the provisions of this Agreement and the Financing Commitment in such amounts and at such times as may be necessary for the payment of Project Costs.

2.1.1 Initial Funding Period. The parties acknowledge that certain Project Costs shall be incurred during the Planning and Pre-Construction and Financing Phases of the Project in connection with the development of the Preliminary Plan (as described in Section 4.3 of the ERA), the preparation of the Development Agreement and the submission of the application for the Financing Commitment. The parties further acknowledge that Howard's obligation to proceed to the Construction Phase of the Project is conditioned upon the satisfaction of certain conditions set forth in Section 6.2 of the ERA. The parties estimate that the Project Costs to be incurred during the Planning and Pre-Construction and Financing Phases of the Project (exclusive of Project Costs incurred but payable at the Financial Commitment closing) should not exceed \$10,800,000. Based on that good faith estimate, the parties agree to each fund up to an Initial Contribution Amount of \$5,400,000 for the Project Costs required to complete the Planning and Pre-Construction and Financing Phases of the Project. The District and Howard shall each deposit into the Escrow Account the sum of \$2,700,000 (50% of the Initial Contribution Amount) on or before the expiration of thirty (30) days following the Commencement Date to fund the initial Project Costs. On or before the expiration of ninety (90) days after the Commencement Date, the remaining Initial Contribution Amount shall be deposited into the Escrow Account by each party. In the event that the Project terminates for any reason, any amount remaining in the Escrow Account shall be used first to pay any outstanding Project Costs and to reimburse any party for out-of-pocket Project Costs that they have paid directly during the Planning and Pre-Construction and Financing Phases. Thereafter, after apportioning the costs paid from the Escrow Account equally, any funds remaining in the Escrow Account shall be returned to the parties in proportion to the amount that each party has deposited or had credited to the Escrow Account as of that date.

2.1.2 Construction Funding. Upon issuance of the Financing Commitment for the tax-exempt financing of Howard's Contribution and the satisfaction of all

other conditions set forth in Section 6.2 of the ERA, the parties shall proceed to the Construction Phase of the Project and each party shall fund the Construction Funding Amount substantially as set forth herein and in accordance with the Financing Commitment. Each party's Construction Funding Amount shall be equal to \$190,968,000 minus the Initial Contribution Amount. On the Construction Phase Commencement Date, each party shall deposit into the Escrow Account an such amount as shall satisfy any equity requirement set forth in the Financing Commitment. Howard's Construction Funding Amount shall be deposited into the Escrow Account established by the Indenture Trustee on or before the Construction Phase Commencement Date. The District's Construction Funding Amount may be deposited in cash or an unconditional, irrevocable letter of credit acceptable to the Lender on the Construction Phase Commencement Date.

2.1.3 Contingency Funding. In the event that the Project Costs exceed the amounts deposited by the parties in the Escrow Account during the Initial Funding and the Construction Funding periods described in Sections 2.1.1 and 2.1.2 together with any investment or interest earnings on funds deposited in the Escrow Account, each party shall have the obligation to deposit into the Escrow Account, upon request of the Escrow Agent or pursuant to the Financing Commitment, the balance of its Total Contribution Obligation less the amounts deposited or credited during the Initial Funding and Construction Funding periods ("Contingency Funding Amount"). The Escrow Agent may request the deposit of all or a portion of the Contingency Funding Amount on the Construction Phase Commencement Date if required by the Financing Commitment. Each party shall make any deposit requested by the Escrow Agent or pursuant to the Financing Commitment within ten (10) business days of the receipt of the written demand for deposit of the Contingency Funding Amount.

2.2 Deposit and Application of Grant. The District shall deposit all funds into the Escrow Account in such amount or amounts as shall be required under this Agreement and the Financing Commitment, by wire transfer of federal funds, certified check or unconditional, irrevocable letter of credit acceptable to the Lender or as otherwise approved by Lender. The Escrow Agent shall hold the amount so deposited for disbursement pursuant to the terms of the Escrow Agreement for the purpose of paying Project Costs substantially in accordance with the provisions set forth in this Agreement and the Financing Commitment. No portion of the Grant shall be disbursed from the Escrow Account until such time as Howard has deposited, or caused to be deposited, into the Escrow Account or received a credit towards its contribution amount as provided in Section 2.4 for a portion of the Howard Contribution that is equal in amount to the amount of the portion of the Grant that has been deposited by the District.

2.3 Deposit and Application of Howard Contribution. Subject to, and upon the satisfaction of, the conditions set forth in Section 2.4, Howard shall cause to be deposited all, or a portion of, the Howard Contribution into the Escrow Account in substantially such amount or amounts as provided under this Agreement and the Financing Commitment, by wire transfer of federal funds or certified check. The Escrow Agent shall hold the amount so deposited for disbursement pursuant to the terms of the Escrow Agreement and the Financing Commitment for the purpose of paying Project Costs in accordance with the provisions set forth in this Agreement and the Financing Commitment. Subject to Lender approval, a portion of the Howard Contribution may be contributed by Howard's donation of HUH Assets transferred to the NCMC Hospital site. Other HUH Assets transferred to NCMC's ownership from Howard, with the

approval of the District and the Lender, may be counted as part of the Howard Contribution. The value of any portion of the Howard Contribution that is made in HUH Assets relocated to the NCMC Hospital site or transferred to NCMC's ownership shall be determined and credited by the mutual agreement of the District, Howard and the Lender.

2.4 Further Conditions to the Deposit of Howard Contribution. District acknowledges that Howard has no obligation to proceed with the Construction Phases of the Project or to execute the Development Agreement until such time as the conditions set forth in Section 6.2 of the ERA are satisfied. Howard's obligation to fund its Construction Funding Amount is further conditioned upon (1) the approval of the terms of the Academic Affiliation Agreement between Howard and NCMC by the NCMC board of trustees and (2) the District's deposit of the District's Construction Funding Amount required under Section 2.1.2 on or before the Construction Phase Commencement Date.

2.5 Third Party In-Kind Contributions. Subject to Lender approval, a portion of the Project Costs may be donated or supplied without cost by third parties as a charitable contribution to Howard or NCMC. Unless expressly designated otherwise by the donor or grantor, the value of these contributions shall be credited equally to each Party's share of the Project Costs but shall not offset or otherwise reduce the Total Contribution Amount of either party hereunder. The value of any third party in-kind contribution shall be determined by the mutual agreement of the District, Howard and the Lender.

2.6 Disbursements from Escrow Account. The Escrow Agent shall disburse funds from the Escrow Account for the payment of Project Costs substantially in accordance with the Project construction schedule, the approval process set forth in the Development Agreement and in accordance with the terms of the Financing Commitment. The Escrow Agent shall make payment upon presentation of a Lender approved requisition in the form of Exhibit B for the payment of Project Costs. All disbursements from the Escrow Account shall be charged 50% to the Grant and 50% to the Howard Contribution, or as otherwise required by the Financing Commitment.

2.7 Investment of Escrow Account. The funds in the Escrow Account shall be invested as set forth in the Escrow Agreement attached as Exhibit A hereto and as acceptable to the Escrow Agent. The earnings on the Escrow Account shall be credited equally to District and Howard. Investment and interest earnings in the Escrow Account shall not offset or reduce the Total Contribution Obligation of each party.

2.8 Distribution Upon Termination of Escrow Account. Upon the termination of the Escrow Account for any reason prior to the Construction Phase Commencement Date, any funds remaining in the Escrow Account shall be distributed to the District and Howard in proportion to the amounts deposited by each party. In the event that funds remain in the Escrow Account upon termination of the Construction Phase and after payment of all Project Costs, such remaining funds shall be distributed by the Escrow Agent as follows: (1) as required by Lender, and (2) the balance, if any, to the parties in proportion to the amounts disbursed from the Escrow Account on account of the Project Costs.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

3.1 Howard. Howard hereby represents and warrants to the District as follows:

3.1.1 Howard is a federally chartered non-profit corporation, in good standing under the laws of the District of Columbia, duly qualified to conduct business in the District of Columbia, and has the power and authority to conduct the business in which it is currently engaged.

3.1.2 Howard (i) has the power and authority to execute, deliver and perform its obligations under this Agreement, and (ii) has taken all necessary action to authorize the execution, delivery and performance of this Agreement.

3.1.3 No consent or authorization of, or filing with, any person (including any governmental authority), which has not been obtained, is required in connection with the execution, delivery and performance of this Agreement by Howard.

3.1.4 This Agreement has been duly executed and delivered by Howard, and constitutes the legal, valid and binding obligation of Howard, enforceable against it in accordance with its terms.

3.1.5 The execution, delivery and performance by Howard of this Agreement will not violate any requirement of law or result in a breach of any contractual obligation to which Howard is a party.

3.1.6 No litigation, investigation or proceeding of or before any arbitrator or governmental authority is pending or, to the best knowledge of Howard, threatened by or against Howard which, if adversely determined, individually or in the aggregate, could reasonably be expected to have a material adverse effect on Howard or its ability to perform its obligations under this Agreement.

3.1.7 The execution, delivery and performance by Howard of this Agreement will not violate any provision of law, any order, rule or regulation of any court or governmental or regulatory body, the Articles of Incorporation or By-Laws of Howard or any indenture or deed of trust, agreement or instrument to which Howard is a party or by which Howard or its assets or properties are bound, or conflict with, result in a material breach of or constitute (with due notice or lapse of time or both) a material default under any such indenture or deed of trust, agreement or instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the assets or properties of Howard, except as otherwise permitted, required or contemplated by this Agreement.

3.1.8 No consent, approval or authorization of, or declaration or filing with, any governmental or administrative body or agency on the part of Howard is required for the valid execution, delivery and performance by Howard of this Agreement.

3.2 The District. The District hereby represents and warrants to Howard as follows:

3.2.1 The District (i) has the power and authority to execute, deliver and perform its obligations under this Agreement, and (ii) has taken all necessary action to authorize the execution, delivery and performance of this Agreement.

3.2.2 No consent or authorization of, or filing with, any person (including any governmental authority), which has not been obtained, is required in connection with the execution, delivery and performance of this Agreement by the District.

3.2.3 This Agreement has been duly executed and delivered by the District, and constitutes the legal, valid and binding obligation of the District, enforceable against it in accordance with its terms.

3.2.4 The execution, delivery and performance by the District of this Agreement will not violate any requirement of law, require any approval of Council (other than the approval of this Agreement, the ERA, Ground Lease and the exemption from the Certificate of Need process) or result in a breach of any contractual obligation to which the District is a party.

3.2.5 No litigation, investigation or proceeding of or before any arbitrator or governmental authority is pending or, to the best knowledge of the District, threatened by or against the District which, if adversely determined, individually or in the aggregate, could reasonably be expected to have a material adverse effect on the District's ability to perform its obligations under this Agreement.

3.2.6 District shall use its best efforts to budget for, seek appropriation for and fund its financial commitments to this Project as set forth in this Agreement. This representation and warranty shall be continuing through the Project completion.

ARTICLE IV **COVENANT OF HOWARD**

4.1 During the term of this Agreement, Howard covenants and agrees that it shall undertake all necessary actions to comply with the NCMC Hospital Services and Plan, the HUH Services and Plan, the Community Participation and the Local Participation requirements set forth in the Preliminary Plan to be approved by the District in accordance with Section 4.3.6 of the ERA.

4.2 A material breach of the covenant in Section 4.1 shall constitute an event of default of this Grant Agreement. If an event of default occurs, then the District may exercise whatever rights and remedies are available at law or in equity, subject to the dispute resolution provisions in Section 4.3; provided, however, that after the date of issuance of the Financing Commitment, the District's obligation to fund the Grant shall not terminate or otherwise be curtailed in any manner and the District shall not have the right to prevent any withdrawals from the Escrow Account that are approved by Lender in connection therewith.

4.3 In the event that a material controversy or dispute arises between the District and Howard with respect to the interpretation, alleged breach or the enforcement of the provisions of the NCMC Hospital Services and Plan, the HUH Services and Plan, the Community Participation or Local Participation requirements set forth in the Preliminary Plan approved by

the District in accordance with Section 4.3.6 of the ERA, the District shall provide written notice to the President of Howard setting forth the specific facts that constitute the basis for the controversy or dispute and a specific proposal for the resolution of the dispute or the cure of the alleged failure to perform. Howard shall have thirty (30) days to prepare and deliver a response to the notice or otherwise commence to cure the default. In the event that the response is unsatisfactory to the District, the parties shall use their good faith efforts to reach a satisfactory resolution of the dispute within thirty (30) days of the delivery of the written response, or such further period of time as the parties mutually agree is reasonable under the circumstances. If such efforts are unsuccessful, the parties shall submit the controversy or dispute to mediation prior to either party instituting any formal legal action at law or in equity.

4.4 Subject to the District's funding its share of the Total Contribution Obligation under this Agreement, this covenant of Howard and the dispute resolution and enforcement provisions of this Article IV shall survive the termination or expiration of this Grant Agreement and shall continue in force and effect throughout the term of the Ground Lease.

4.5 Howard shall require as a condition of an assignment of any rights and obligations under the ERA to any permitted assignee under the ERA or this Grant Agreement, an assignment to and assumption by the assignee of this covenant and an express agreement to the provisions of this Article IV.

ARTICLE V **MISCELLANEOUS**

5.1 Entire Agreement. This Agreement is the Grant Agreement referred to in the ERA and is the entire agreement of the parties with respect to the Grant and the Howard Contribution, but with respect to other matters, must be read in conjunction with the ERA and the other agreements referred to in the ERA. This Agreement shall not be amended or modified in any fashion except by instrument in writing executed by both District and Howard.

5.2 Notices. Any notice or other communication given pursuant hereto by either of the parties hereto to the other party hereto shall be in writing and delivered by hand or mailed by first class mail, or by courier, postage prepaid (mailed notices shall be deemed given when duly mailed), to the parties at their addresses set forth above or to such other address or addresses as hereafter shall be furnished as provided in this Section 4.2 by either of the parties hereto to the other party hereto and to any leasehold mortgagee of Howard, its successors or assigns, pursuant to the Financing Commitment.

5.3 Conflicts. In the event of any conflict or inconsistency between the provisions of this Agreement, the Development Agreement, and the Financing Commitment, the Financing Commitment shall prevail to the extent applicable.

5.4 Waiver; Remedies. No delay on the part of either party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of either party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder, nor shall any single or partial exercise of any right,

power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege substantially.

5.5 Assignment. Howard shall have the right to assign this Agreement to NCMC or a wholly-owned affiliate of Howard or NCMC. Howard may not assign all or any portion of its rights under this Agreement to any other entity without the prior written consent of District, provided that Howard may assign its rights hereunder to a third party to secure debt.

5.6 Exculpation and Indemnification.

(a) In the exercise of the powers of the District and its elected and appointed officials, officers, agents and employees involved in the making, funding, or disbursement of the Grant, no such person shall be accountable to Howard for any action taken or omitted in good faith and reasonably believed by it or them to be authorized or within the discretion or rights or powers conferred. The District and any such person shall be protected in acting upon any paper or document believed to be genuine, and may conclusively rely upon the advice of counsel and may (but need not) require further evidence of any fact or matter before taking any action. No recourse shall be had by Howard for any claims based upon this Agreement against the District or any such person alleging personal liability unless such losses, claims, damages or liabilities are based upon the willful misconduct or fraudulent conduct of any elected or appointed official, officer, or employee of the District involved in the making, funding, or disbursement of the Grant.

(b) In the exercise of the powers of the Howard and its elected and appointed officials, officers, agents and employees involved in the making, funding, or disbursement of the Howard Contribution, no such person shall be accountable to District for any action taken or omitted in good faith and reasonably believed by it or them to be authorized or within the discretion or rights or powers conferred. Howard and any such person shall be protected in acting upon any paper or document believed to be genuine, and may conclusively rely upon the advice of counsel and may (but need not) require further evidence of any fact or matter before taking any action. No recourse shall be had by District for any claims based upon this Agreement against Howard or any such person alleging personal liability unless such losses, claims, damages or liabilities are based upon the willful misconduct or fraudulent conduct of any elected or appointed official, officer, or employee of Howard involved in the making, funding, or disbursement of the Howard Contribution.

(c) If a party or any other person entitled to indemnification under this Section 4.5 ("Indemnatee") receives notice of any claim or action against the Indemnatee with respect to which indemnification is to be sought from a party under this Section 4.5, the Indemnatee will timely notify the party of the claim or action in writing; timely notice shall mean at such a time so as to enable the indemnifying party to meaningfully participate in a defense against such a claim, and in the event of an untimely notice, an indemnifying party's obligation hereunder shall abate only to the extent such untimeliness was the proximate cause of a loss as to which indemnity is sought hereunder. In the event any such claim is made or action brought against any Indemnatee concerning any matters described in Section 4.5 (a) or (b) of this Agreement and the Indemnatee is entitled to indemnification thereunder, the Indemnatee may direct the indemnifying party to assume the defense of the claim and any action brought on the

claim (with counsel reasonably satisfactory to the Indemnatee) and to pay all reasonable expenses incurred as a result of the claim; provided, however, that unless and until the indemnifying party assumes the defense of any such action at the request of such Indemnatee, the indemnifying party shall have the right to participate at its own expense in the defense of any such action. If the indemnifying party shall not have employed counsel to have charge of the defense of any such action (following the notice and direction specified above), or if indemnifying party and an Indemnatee shall have reasonably concluded that there may be defenses available to that Indemnatee which are different from or additional to those available to the indemnifying party (in which case the indemnifying party shall not have the right to direct the defense of such action on behalf of such Indemnatee), the reasonable legal and other expenses incurred by such Indemnatee shall be borne by the indemnifying party. No party will be liable in respect of any settlement effected without its prior consent. The defense of any such claim or action shall include the taking of all actions necessary or appropriate to the defense. The indemnifying party agrees to reimburse any reasonable legal and other expenses reasonably incurred by any Indemnatee in connection with investigating or defending any such loss, claim, damage, liability or action of this Agreement.

(d) The provisions of this Section 4.5 shall survive the termination of this Agreement.

5.7 Anti-Deficiency Provision.

The District and Howard acknowledge and agree that the obligations of the District to fulfill financial obligations of any kind pursuant to any and all provisions of this Agreement, or any subsequent agreement entered into pursuant to this Agreement or referenced herein to which the District is a party, are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§1341, 1342, 1349, 1351, (ii) the D.C. Official Code 47-105, (iii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 - 355.08, as the foregoing statutes may be amended from time to time, and (iv) Section 446 of the District of Columbia Home Rule Act, regardless of whether a particular obligation has been expressly so conditioned. The District agrees to exercise all lawful and available authority to satisfy any financial obligations of the District that may arise under this Agreement; however, since funds are appropriated annually by Congress on a fiscal year basis, and since funds have not yet been appropriated for the undertakings contemplated herein, the District's legal liability for the payment of any costs shall not arise unless and until appropriations for such costs are approved for the applicable fiscal year by Congress (nor shall such liability arise if, despite the District's compliance with Section 3.2(f) and this Section, a request for such appropriations is excluded from the budget submitted by the Council to Congress for the applicable fiscal year). The District makes no representation or assurance that Congress will grant the authorizations and appropriations necessary for the District to perform its financial obligations under this Agreement.

During the term of this Agreement, the Mayor or other appropriate official shall for each fiscal period include in the budget application submitted to the Council the amount necessary to fund the District's obligations hereunder for such fiscal period. Notwithstanding the foregoing, no officer, employee, director, member or other natural person or agent of the District

shall have any personal liability in connection with the breach of the provisions of this Section or in the event of a default by the District under Section 3.2(f) or this Section.

This Agreement shall not constitute an indebtedness of the District nor shall it constitute an obligation for which the District is obligated to levy or pledge any form of taxation or for which the District has levied or pledged any form of taxation.

IN ACCORDANCE WITH §446 OF THE HOME RULE ACT, D.C. OFFICIAL CODE §1-204.46, NO DISTRICT OFFICIAL IS AUTHORIZED TO OBLIGATE OR EXPEND ANY AMOUNT UNDER THIS AGREEMENT UNLESS SUCH AMOUNT HAS BEEN APPROVED AND APPROPRIATED BY ACT OF CONGRESS.

5.8 Captions. All Article and Section titles or captions contained in this Agreement are for convenience only and shall not be deemed a part of this Agreement.

5.9 Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement, and either party hereto may execute this Agreement by signing one or more counterparts thereof.

5.10 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the District of Columbia.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

DISTRICT:

DISTRICT OF COLUMBIA

By: _____

Date: _____

Name _____

Title: _____

HOWARD:

HOWARD UNIVERSITY

By: _____

Date: _____

Name _____

Title: _____

GRANT AGREEMENT ATTACHMENTS

Exhibit A- Form of Escrow Agreement

Exhibit B- Form of Requisition from Escrow Account

EXHIBIT A

ESCROW AGREEMENT

THIS ESCROW AGREEMENT ("Escrow Agreement"), dated this _____ day of _____, 2006, by and among the DISTRICT OF COLUMBIA, a municipal government (the "District"), HOWARD UNIVERSITY, a non-profit corporation ("Howard"), and [_____], a _____ ("Escrow Agent").

RECITALS:

A. District and Howard entered into a Grant Agreement dated _____, 2006 (the "Grant Agreement") (hereafter, all capitalized terms not defined in this Escrow Agreement shall have the meaning given to them in the Grant Agreement), in which the District and Howard each agreed to deposit a Total Contribution Amount not to exceed \$212,168,000 into an escrow account (the "Escrow Account") to be used to pay Project Costs incurred pursuant to the Grant Agreement.

B. Escrow Agent is willing to perform its escrow duties in connection with the Grant Agreement, subject, however, to the terms of this Escrow Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants set forth below, and for other good and valuable consideration, the receipt and sufficiency of which each of the parties acknowledges, the District, Howard and Escrow Agent agree, from and after the date hereof, as follows:

1. Escrow Agent acknowledges receipt of an Initial Funding Amount of \$ _____ from the District as a portion of the Grant and \$ _____ from Howard as a portion of the Howard Contribution and has deposited such funds into the Escrow Account established by the Escrow Agent, which monies are to be held in trust for the sole benefit of District and Howard. The parties acknowledge that the funds received by Escrow Agent to the date of this Escrow Agreement do not constitute the total of either the Grant or the Howard Contribution. The District and Howard shall each make additional payments to Escrow Agent with respect to the Grant and the Howard Contribution as set forth in the Grant Agreement. Upon receipt of such payments, Escrow Agent will deposit the funds into the Escrow Account to be held in trust for the sole benefit of the District, Howard and NCMC bondholders.

2. Escrow Agent shall perform its escrow duties set forth in the Grant Agreement and this Escrow Agreement, subject however, to the terms of this Escrow Agreement.

3. Upon receipt of a Certificate and Requisition (the "Requisition") in the form and including the content set forth as Exhibit B to the Grant Agreement, the Escrow Agent shall withdraw the amount of the Requisition from the Escrow Account and deliver the funds as instructed in the Requisition within two (2) business days after receipt of the Requisition.

4. Escrow Agent may rely and shall be protected in acting or refraining from acting upon any written notice, statement, instruction or request furnished to it under the Grant Agreement or this Agreement and believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties. Escrow Agent shall be under no duty to make any inquiry as to the form, genuineness, proper execution or accuracy of the notice, statement, instruction or request which appears on its face to be regular and is not known to Escrow Agent to be irregular.

5. Escrow Agent shall not be liable for any action taken by it in good faith and believed by it to be authorized or within the rights or powers conferred upon it by the Grant Agreement or this Agreement absent the negligence or willful misconduct of Escrow Agent.

6. Escrow Agent may resign and be discharged from its duties or obligations under the Grant Agreement and this Escrow Agreement by giving reasonable written notice of its resignation to the District and Howard, provided however that no such resignation shall be effective until the appointment of a successor Escrow Agent as provided herein here. In the event that Escrow Agent resigns, District and Howard shall arrange for a mutually acceptable party to assume the duties of Escrow Agent ("New Escrow Agent"). If the District and Howard do not appoint a New Escrow Agent within 30 days after receipt of notice of the Escrow Agent's resignation notice, the Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor Escrow Agent. The New Escrow Agent shall execute an instrument evidencing its assumption of the duties of Escrow Agent under this Agreement and the Grant Agreement. Such instrument shall provide that the New Escrow Agent shall have the benefit of all provisions contained in this Agreement for the protection of Escrow Agent. The District and Howard shall notify Escrow Agent promptly of the appointment of the New Escrow Agent and upon receipt of the notice, Escrow Agent shall deliver the funds in the Escrow Account to the New Escrow Agent. If Escrow Agent does not receive notice of the appointment of the New Escrow Agent by the effective date of the Escrow Agent's resignation, the Escrow Agent shall deliver the funds in the Escrow Account to a court of competent jurisdiction.

7. If conflicting demands are made or conflicting notices are served upon the Escrow Agent with respect to the Grant Agreement or this Escrow Agreement, Escrow Agent shall comply with the written instructions of Howard in the event that payments are due to third parties for Project Costs incurred for the Project. With respect to any other claims or demands, Escrow Agent shall cease all further proceedings in the performance of this Escrow Agreement so long as the disagreement shall continue (except its duties pursuant to Section 12 below). In so doing, Escrow Agent shall not be liable for damages or injuries to District or Howard or any other person for its failure to comply with the conflicting demands or notices. Escrow Agent shall continue to refrain or refuse to act until (i) the rights of the adverse claimants have been finally adjudicated in a court assuming jurisdiction of the parties and the Escrow Account (after expiration of all appeal periods) or (ii) all differences have been adjusted by mutual agreement of the parties and the Escrow Agent shall have been notified of the agreement by a writing signed by District and Howard. In the alternative, Escrow Agent may, but shall not be obligated to, file a suit in interpleader for a declaratory judgment for the purposes of having the respective rights of the claimants adjudicated and may deliver the Escrow Account to the court.

8. If the Escrow Account is at any time attached, garnished or levied upon under any court order or if the payment or delivery of the Escrow Account is stayed or enjoined by any court order or if any order, judgment or decree shall be made or entered by any court affecting the Escrow Account, the Escrow Agent is authorized, in its sole discretion, to rely upon and comply with the order, writ, judgment or decree. Escrow Agent shall not be liable to any of the parties or to any other person, firm or corporation by reason of such compliance even though the order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated.

9. Escrow Agent undertakes to perform only those duties that are expressly set forth in the Grant Agreement and this Escrow Agreement. The District and Howard acknowledge that Escrow Agent's duties are purely ministerial in nature. Upon making disposition of the Escrow Account in accordance with this Escrow Agreement and with the Grant Agreement, the Escrow Agent shall be deemed fully released and discharged from any and all duties and obligations under the Grant Agreement and this Escrow Agreement, without the need that any other documentation be executed by the District or Howard and this Escrow Agreement shall be terminated at that time.

10. The District and Howard each represents and warrants that its federal tax identification number is as set forth below. Escrow Agent shall invest the funds in the Escrow Account pursuant to the written instructions of the District and Howard and the earnings shall inure proportionately to the deposits of the District and Howard. Escrow Agent shall not be responsible for (i) any fluctuations in the interest rate applicable to any cash held by it pursuant to or by virtue of this Escrow Agreement; (ii) the validity, sufficiency, collectibility or legal effect of any instrument deposited with Escrow Agent; (iii) the loss or impairment of the Escrow Account resulting from the failure, insolvency, suspension, conservatorship or receivership of a financial institution or other depository or (iv) the availability or sufficiency of federal deposit insurance with respect to the Escrow Account, unless the loss of funds is solely attributable to an act or omission of Escrow Agent that constitutes gross negligence, willful misconduct, or intentional fraud by the Escrow Agent.

11. Howard shall indemnify and hold harmless Escrow Agent against all loss, liability, claim, and expense, including attorneys' fees and litigation costs, incurred by Escrow Agent arising out of or in any way related to Escrow Agent's duties under the Grant Agreement or this Escrow Agreement, provided that the Escrow Agent was acting in good faith and not acting in a negligent manner or engaging in willful misconduct.

12. All notices and communications under this Escrow Agreement shall be in writing and shall be deemed duly given if (i) personally delivered with signed and dated receipt on the day of delivery, (ii) delivered by overnight commercial courier (provided a signed and dated written receipt is obtained) on the day after dispatch or (iii) mailed by registered or certified mail, return receipt requested, first class, postage prepaid three (3) days after deposit, addressed as follows:

15. Escrow Agent shall be entitled to an annual fee, in arrears, of \$_____, and shall be reimbursed for any reasonable out-of-pocket expenses. Such fees shall be paid from the Escrow Account as Project Costs. Escrow Agent shall, from time to time, submit an invoice for expenses to the Parties, and the Parties agree to provide a Requisition to pay the fees promptly.

16. This Agreement shall be governed by the laws of the District of Columbia.

IN WITNESS WHEREOF, the parties have signed, sealed, and delivered this Agreement as of the date and year first written above.

DISTRICT:

DISTRICT OF COLUMBIA

By: _____

Name: _____

Title: _____

Tax I.D. No. _____

HOWARD:

HOWARD UNIVERSITY

By: _____

Name: _____

Title: _____

Tax ID No.: _____

ESCROW AGENT:

$$[\quad]$$

By: _____

Name: _____

Title: _____

Tax ID No.: _____

EXHIBIT B

ESCROW ACCOUNT

REQUISITION

[], as Escrow Agent
[legal name, address]

Pursuant to the Escrow Agreement dated as of _____, 2006 (the "Escrow Agreement") between the District of Columbia, a municipal corporation, Howard University ("Howard"), a District of Columbia non-profit corporation, and [] (the "Escrow Agent"), Howard hereby requests that the Escrow Agent disburse funds from the Escrow Account to the payees, and in the amounts, listed on Schedule 1 hereto. Capitalized words and phrases not otherwise defined shall have the meaning given to them in the Grant Agreement between the District and Howard dated as of _____, 2006.

Howard certifies as follows:

1. None of the items for which funds are being requisitioned has formed the basis for any disbursement heretofore made from the Escrow Account.
2. Each of the items for which funds are being requisitioned is a Project Cost as that term is defined in the Grant Agreement and the incursion of that Project Cost is evidenced by an invoice or other similar documentation, the original or a copy of which is attached to this requisition.
3. Each of the items for which funds are being requisitioned is (i) a necessary and proper item to be paid from the Escrow Account pursuant to the Grant Agreement, and (ii) currently due and payable or has been paid by Howard and is properly payable or reimbursable from the Escrow Account pursuant to the Grant Agreement.
4. This Requisition is given without prejudice to any rights against third parties which exist at the date of this certificate or which may subsequently come into being.

Howard University

Date: _____

By: _____

Approved by [Lender]

By: _____

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF POLICY AND LEGISLATIVE AFFAIRS
Clearance Form
Proposed Legislation for the Council**



1. ORIGINATOR

Today's Date: February 8, 2006

Date Needed: February 8, 2006

Originator's Name: Gina Lagomarsino

Orig. Agency: OCA

Policy Analyst: Jon Fernandez

Phone: 724-7675

Type of Document: Letter ☐ Mayor's Order ☐ Mayor's Memorandum ☐ Legislation ☐
Contract ☒ Reprogramming ☐ Other _____

Contract: National Capital Medical Center Grant Agreement

Summary of Key Points:

- The grant agreement authorizes grant to HU for no more than \$212.2 million for construction of NCMC. The agreement also sets the terms under which the grant will be disbursed or changed.

Political Assessment:

- This is the final component of the package that Mayor is asking Council to pass with regard to NCMC project.

Legal Sufficiency: Yes ☒ No ☐ **Explain:** Attached

Fiscal Impact: Yes ☐ No ☒ **Explain:** Funds are sufficient (attach when possible).

Recommendation by Analyst: ☒ Send to Council ☐ Do Not Send To Council ☐ Return to Agency

2. CLEARANCES

ROUTING TO	Agency Director	Deputy Mayor	Policy & Legislative Affairs	Legal Counsel	CFO	City Administrator	Chief of Staff	Office of the Secretary
Approval Required			X	X		X	X	
Initials			<i>SM</i>	<i>LB</i>		<i>RCB</i>	<i>Jo</i>	
Date			<i>2/8/06</i>	<i>2-8-06</i>		<i>2/8/06</i>	<i>2/8/06</i>	

COMMENTS/CHANGES:

IQ Number:

Council Action:

Date Transmitted to Council:

Bill Number: